

Message Text

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FOR D/LOS - AMB. BREWSTER ONLY FROM MR. OXMAN

E.O. 11652: XGDS-3

TAGS: PLOS

SUBJ: LOS: DISPUTE SETTLEMENT

DISPUTE SETTLEMENT IN THE ECONOMIC ZONE.

1) WITH THE ADDITION OF COMPULSORY DISPUTE SETTLEMENT FOR MARINE SCIENTIFIC RESEARCH DISPUTES IN THE ECONOMIC ZONE, THE RSNT VERSION OF ART. 18, PART IV, WOULD LEAVE ONLY THE QUESTION OF FISHERIES TO BE RESOLVED. HOWEVER, THE EXISTING TEXT IS UNDER STRONG ATTACK BY THE DEVELOPING COASTAL STATES THAT CONSIDER THEIR DOMESTIC COURTS TO BE ADEQUATE REMEDY FOR SUCH DISPUTES, AND ACCEPTANCE OF ANY COMPULSORY DISPUTE SETTLEMENT IN THE ECONOMIC ZONE TO BE SOMEHOW INCOMPATIBLE WITH THEIR SOVEREIGN PREROGATIVES. MAINTENANCE OF AT LEAST THE PRESENT TEXT IS NECESSARY TO PROTECT OUR NAVIGATIONAL AND ENVIRONMENTAL OBJECTIVES, TO UNDERLINE A MEANS FOR THE PEACEFUL AND ORDERLY SETTLEMENT OF MOST LOS DISPUTES CONCERNING THE INTERPRETATION AND APPLICATION OF THE CONVENTION, WHICH WILL RELATE TO THE ECONOMIC ZONE.

2) A STRONG POSITION ON DISPUTE SETTLEMENT FOR FISHERIES CREATES BARGAINING ROOM FOR RETAINING AT LEAST

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THE PRESENT TEXT WITH THE ADDITION OF SCIENTIFIC RESEARCH,

AS WELL AS FURTHERING THAT INTEREST TO THE EXTENT POSSIBLE.

3) THERE ARE THREE BASIC OPTIONS FOR INCLUDING FISHERY DISPUTES ARISING IN THE ECONOMIC ZONE WITHIN THE COMPETENCE OF THE COMPULSORY DISPUTE SETTLEMENT PROCEDURES. FIRST, WE COULD INCLUDE A NEW EXCEPTION TO THE ART. 18 EXCLUSION OF DISPUTES ARISING FROM THE ECONOMIC ZONE FOR CLAIMS THAT A COASTAL STATE HAS VIOLATED ITS OBLIGATIONS RELATING TO THE CONSERVATION OR UTILIZATION OF LIVING RESOURCES. THIS WOULD RESULT IN FULL DISPUTE SETTLEMENT FOR VIOLATIONS OF THE CONVENTION INVOLVING THE KEY FISHERIES ARTICLES AND IS OUR PREFERRED POSITION. BEGIN UNDERLINE SECOND, END UNDERLINE WE COULD AMEND ART. 18, PARA. 1(C) TO INCLUDE VIOLATIONS OF THE CONVENTION WHERE A COASTAL STATE FAILS TO APPLY INTERNATIONAL STANDARDS OR CRITERIA RELATING TO THE CONSERVATION OF LIVING RESOURCES (IN ADDITION TO SUCH VIOLATIONS RELATING TO THE PRESERVATION OF THE MARINE ENVIRONMENT AS PRESENTLY PROVIDED). THIS WOULD PROVIDE FOR DISPUTE SETTLEMENT ONLY WHERE A COASTAL STATE IS ALLOWING OVER-EXPLOITATION AND THREATENING THE SURVIVAL OF A STOCK AS OF RENEWABLE SOURCE OF PROTEIN FOR FUTURE YEARS AND GENERATIONS. BEGIN UNDERLINE THIRD, END UNDERLINE WE COULD ADD A NEW EXCEPTION TO THE EXCLUSION, ALLOWING CLAIMS TO BE BROUGHT ON THE BASIS EITHER THAT THE COASTAL STATE HAS "ABUSED" ITS RIGHTS OR -GROSSLY AND PERSISTENTLY ABUSED" ITS RIGHTS. THIS OPTION PROVIDES MINIMAL PROTECTION FOR DISTANT-WATER FISHERMEN, SINCE ONLY THE MOST EXTREME VIOLATIONS OF THE CONVENTION WOULD BE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT.

4) OF THESE THREE OPTIONS, THE THIRD IS THE MOST NEGOTIABLE. EVEN THE WEAK FORMULATION IS STRONGLY OPPOSED BY MANY COASTAL STATES, SOME OF WHOM INSIST ON EXCLUDING ALL DISPUTES ARISING FROM THE ECONOMIC ZONE, WHILE OTHERS WOULD EXCLUDE ALL DISPUTES RELATING TO RESOURCES IN THE ECONOMIC ZONE. THE USSR, JAPAN, SOME LANDLOCKED OR GEOGRAPHICALLY DISADVANTAGED AND MOST EUROPEANS SUPPORT COMPULSORY DISPUTE SETTLEMENT FOR FISHERIES IN SOME FORM.

5) WITHIN THE USG, SECRETARY RICHARDSON STRONGLY
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SUPPORTS COMPULSORY DISPUTE SETTLEMENT FOR FISHERIES AND THE GOVERNMENT AS A WHOLE SUPPORTS COMPULSORY DISPUTE SETTLEMENT RELATING TO THE ECONOMIC ZONE TO THE MAXIMUM EXTENT ACHIEVEABLE.
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